

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

**KIRK MICHAEL BAUER,**

Plaintiff,

v.

**SUE WASHBURN**, *Superintendent, Eastern  
Oregon Correctional Institution,*

Defendant.

Case No. 2:19-cv-264-AC

**ORDER**

**Michael H. Simon, District Judge.**

United States Magistrate Judge John V. Acosta issued Findings and Recommendation in this case on May 3, 2020. ECF 26. Judge Acosta recommended that this Court deny and dismiss Plaintiff Kirk Michael Bauer’s Amended Petition for Writ of Habeas Corpus (ECF 6) and decline to grant Bauer a certificate of appealability. No party has filed objections, but Bauer—who is *pro se*—has moved for a certificate of appealability. ECF 28.

Under the Federal Magistrates Act (Act), the court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). If a party files an objection to a magistrate judge’s findings and recommendations, “the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate judge’s findings and recommendations if objection is made, “but not otherwise”).

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate judge’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge Acosta’s Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court ADOPTS Judge Acosta’s Findings and Recommendation, ECF 26. The Court DENIES and DISMISSES Bauer’s Amended Petition for Writ of Habeas Corpus (ECF 6). The Court further declines to issue a Certificate of Appealability on the basis that Bauer has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2). ECF 28.

**IT IS SO ORDERED.**

DATED this 14th day of June, 2021.

/s/ Michael H. Simon  
Michael H. Simon  
United States District Judge